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A SYMPOSIUM

ON THE VALUE OF HUMANISTIC, PARTICULARLY CLASSICAL,
STUDIES AS A PREPARATION FOR THE STUDY OF LAW, FROM
THE POINT OF VIEW OF THE PROFESSION¹

I. THE VALUE TO THE LAWYER OF TRAINING IN THE CLASSICS

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In most of the summaries of the faculties and qualities employed by the lawyer, a prominent place is given to the primary faculty of "common sense." This means "the correct sense of common things"—that is, sound judgment in affairs, or sound judgment. The significance of this and its bearing upon our subject are found in the emphasis laid upon "judgment" as the lawyer's chief requisite.

Starting with native endowments of intelligence and common sense, in what should the lawyer seek training by his pre-

¹ Part of the programme of the Classical Conference at Ann Arbor, Mich., March 27, 1907.

Through the kind assistance of the Board of Regents of the University of Michigan and the courtesy of the publishers of the *School Review*, it has been possible to secure a number of reprints of this symposium for distribution. Those desiring a copy may address (inclosing a two-cent stamp for postage) MR. LOUIS P. JOCELYN, Secretary Michigan Schoolmasters' Club, South Division St., Ann Arbor, Mich.

The Symposium will be continued, with a discussion of the value of humanistic studies as a preparation for the study of theology, at the Classical Conference of 1908. The papers and addresses upon "The Value of Humanistic, Particularly Classical, Studies as a Preparation for the Study of Medicine and of Engineering," at the Conference of 1906, were published in the *School Review*, Vol. XIV (1906), pp. 389-414.



POLYTECHNIC HIGH SCHOOL, LOS ANGELES, CAL

liminary education; and what studies will most aid him to such training? The answer is self-evident—training in judgment, and training in affairs. Conceding at once that training in the classics does not give training in affairs, it is sufficient for our purpose to maintain that training in the classics does give training in judgment. And here is the *crux* of the whole matter. The advocates of training in affairs have deemed the case settled by the admission that such training is necessary, and that it is not afforded by the classics. No question is made or admitted of the proposition that the lawyer needs training in affairs, and that he cannot get that training from the classics. That must be obtained in some other way.

But it is maintained for the classics (1) that they do in a superior degree give training in judgment; and (2) that training in affairs is in a way inevitable, while training in judgment is not; and that therefore the training which needs the solicitude of the teacher, the pupil, and the public is training in judgment.

The contentious work of the lawyer consists largely of such as the following:

1. The *ascertainment* of facts and proofs of facts.
2. The *ascertainment of the law* and of the authoritative statement of the law.
3. The *interpretation* of the law, to develop its relation and application to the facts.
4. *Expressional* work, viz.: The convincing the tribunal, and persuading it to adopt his view.
5. The *record-making* work, which secures the correct and permanent recording and carrying into effect of the result attained.

Each of these has its counterpart operation; thus:

- 1a. Ascertainment of *want* of facts, or facts of disproof of the opponent's contention.
- 2a. Ascertainment of dominant or distinguishing rules of law eliminating the rules relied on by the opponent.
- 3a. Interpretation of the facts and rules relied on by the opponent, in order to develop their want of relation and application to each other and defeat the conclusion contended for by the opponent.
- 4a. Expressional work in inducing the tribunal to reject the course sought by the opponent.
- 5a. The record-making work of the defeated lawyer, viz., the securing of a record disclosing the *errors* of the court upon which an appeal may be based and a reversal secured.

The advisory work of the lawyer involves all these steps, and requires something more, viz., the carrying-on of all these operations *in advance* of the event, in order to guide the client and so direct his conduct that when the event occurs it shall inure to the client's welfare. It involves the carrying-on of the **entire** transaction, including the lawsuit itself, in thought and imagination, the ascertainment of the probable result, and the direction of the client's steps to avoid dangers and secure the benefits involved. And this advisory work constitutes by far the greater portion of the lawyer's task. What faculties are most employed in it? The answer is plain:

In (1), the *ascertainment of facts*, the faculty most employed is that of *judgment*, the faculty which *measures, weighs, compares, contrasts, and balances* (a) the conflicting statements of witnesses; (b) the conflicting phases of a complicated state of facts; (c) the conflicting motives, interests, prejudices, and tendencies of the parties and the witnesses.

In (2), the *ascertainment of law*, the faculty most employed is that of judgment which *measures, weighs, compares, and balances* the seemingly conflicting statements of the law from different precedents, statutes, and principles; that determines which precedent, which statute, which principle dominates the matter in hand, takes it out from under the operation of some other, and so controls the result.

In (3), *interpretation*, the faculty most employed is that of judgment which *measures, weighs, compares, and balances* the evidences and reasons for conflicting interpretations, and selects the one which should prevail.

But here another set of faculties bears an important part in the lawyer's work, viz., the faculties which discover and develop the diverse meanings of a rule, viz., the *dialectic* faculties. Those are the faculties of critical examination or analysis, of logic, of "invention" (i. e., "discovery" of meanings and expression), of discussion; and with the operation of each of these the use of the faculty of judgment is interwoven.

In (4), *the expressional work*, the dialectic and the *rhetorical* faculties are all brought into play. The latter include the

entire range of the language faculties—those of composition, systematic arrangement, style, memory, and active expression. In the employment and control of these language faculties the faculties of judgment are continually called into action.

In (5), *the record-making work*, the language faculties play a leading part, in selecting and forming the terms of the judgment or decree, and the permanent portions of the record on which it is based.

It appears, then, that the faculties of judgment and the linguistic faculties are pre-eminent in the work of the lawyer, and should be developed by special education. What study will best train his faculties of judgment and of language? I believe that, next after a thorough training in the use of the mother-tongue, the study of the classics will best accomplish this result.

In the presence of a company of teachers it is not necessary to dwell upon the details by which this is demonstrated.

In translating a long sentence from Greek or Latin, the student has to do with, say, 100 words. Each of the fifty more important of these words has from five to fifteen meanings in English. The student must measure, weigh, compare, contrast, and balance these different meanings to insure that he has found (1) the real meaning of the original; (2) the best English equivalent for it; (3) the best English expression of it. He will find that the connectives, particles, and seemingly less important words are themselves *signs* by which he will be guided to the proper interpretation of the more important words, and aided in the selection of English equivalents. Like the discards in whist, these smaller members become most important indications of the interpretation of those to come. He will find that several of the words are in forms common to several distinct cases, as datives and ablatives, or to several different forms of thought as, for example, the several different uses of the subjunctive; and finally that the whole sentence may be treated as belonging to one or another of several different rhetorical forms. And he must measure and weigh and compare and contrast and balance at each stage of his work, to be sure that he is going right, and selecting the correct case and form.

Oh, what trials to the quick and accurate mathematical boy, who can compare algebraic squares mentally, and solve equations by inspection; to the observing scientific boy, who can classify the game birds of his locality at a glance! Here he must do something more. He must exercise his judgment. And that undeveloped faculty awakens and grows by exercise, and gradually acquires something of readiness and skill like unto the boy's skill with equations and game birds.

And the classics are the means of this acquisition.

This discussion is not intended to prescribe for the exceptional genius, for the Abraham Lincoln or John G. Johnson, who will rise with any education, or with no education, or with self-education. And the question is not whether the youth who hopes to be a lawyer shall be educated, nor whether he shall be educated in the law, but *what studies he shall pursue before taking up the law*. Comparing the classics with (a) mathematics, (b) the modern languages, (c) the natural sciences, (d) the applied sciences, (e) historical studies, (f) philosophical studies, I hold that the study of the classics yields superior training in the faculties of judgment and of language, and that these are what he most needs.

We could easily take up the comparison of the classical studies with those in each of the other groups of studies above noted, and find that, while each of the other groups has some point of excellence in which it surpasses all others, yet in the discipline of the faculties which *measure*, and *weigh* and *compare*, and *contrast* and *balance* the different elements, and *exercise selection* and make decision among them, the study of the classics surpasses them all.

(a) In mathematics, broadly speaking, each problem admits of but one answer, obtained in one way. The faculties of precise definition and accurate operation and statement are greatly disciplined, but the faculties of judgment, less so.

(b) In the modern languages (1) there is a royal road to each one of them, viz., taking a vacation in its mother-land; and (2) the modern forms of speech are corrupted in use and aided

by object-lessons to such an extent as distinctly to lessen their value as discipline for the judgment.

(*c, d*) The natural and applied sciences pre-eminently discipline the powers of observation.

(*e, f*) The historical and philosophical studies (after their initial stages, as *information studies*) are *higher forms of cultivation of the judgment*. They need a preliminary training of the judgment to build on, just as do the study and practice of the law. If we consider the training of the linguistic and dialectic faculties, we shall find that (after a thorough training in the use of the mother-tongue) the classics come first and the philosophical studies next. The lawyer then should study the classics and the philosophical studies.

It should be realized that the chief business of the lawyer has become that of business *adviser*; that the writing and interpreting of contracts, charters, ordinances, statutes, wills, by-laws, and business regulations, and advising with reference thereto, constitute his chief occupation. In all this he is constantly required to distinguish closely between the thought and the words in which the thought is expressed. Merely to illustrate, in these instruments such forms of thought as express alternative future possibilities are in constant use. In the discussion of adverse interests and claims the "supposition contrary to fact" is continually involved. Other things being equal, the mind trained by the rules and exceptions of classic syntax and their noble examples in classic literature has a familiarity with the *forms of thought*, as distinguished from the *words* in which they are expressed, which nowhere else, as I believe, can be acquired so well.

The objection that the classics are uninteresting, hard, and dry, is put forth by the boy himself. And from every point of view we give this objection too much importance. But to the active practicing lawyer I beg to say that this is an important element in their value.

A lawyer must needs study uninteresting old statutes, dry and ancient blue books, stupid, antiquated ordinances, early black-letter precedents, to find out what the law is and what his client's

rights are. Unless he can study alertly, patiently, and discriminatingly all these uninteresting, hard, and dry sources of the law and bases of rights, he will never reach the higher walk of his profession. Many men have natural aptitude for this. Many men have such superior ambition and industry that they will learn how to do this work when the necessity for it overtakes them. Of them we do not speak. But for the average youth who aims to become a lawyer there is great need that he be given special *training in the interpretation of documents* which are uninteresting, hard, and dry. He will have no end of it to do in his profession. He should conquer this preliminary difficulty before he enters upon his work. And while hard work for hard work's sake is a solecism, hard work *in something worth while*, for the strength and skill to be gained thereby, is the essence of all disciplinary education. And this applies to the study of the classics by the would-be lawyer.

I have said nothing of the fact that there are thousands of legal terms adopted bodily from the Latin; that the terminology of the law is largely a Latin terminology; that our law itself is built upon the Roman law as a foundation, to a degree that only our best lawyers realize; that most of the legal conceptions which are daily employed in the profession are largely Roman in their origin; that the full-blown judicial statements with which the early common law abounds were many of them taken almost bodily from the Roman law; that, in the language of Sir MATTHEW HALE, "a man could never well understand law as a science without first resorting to the Roman law for information;" and he lamented that it was so little studied in England (1 Kent, 546).

In all this the person who appreciates the value of the scientific treatment of law will find powerful additional arguments for the study of the classics. The Latin of the *Institutes* is mainly post-classical in the technical sense, but may be treated as classical for present purposes. I have often regretted that the colleges in their offerings of Latin do not more often include the *Institutes* of Gaius and Justinian, which would familiarize

the student, not only with classical forms of thought and expression, but with legal conceptions also.

We know, of course, that the slang of the street, the jargon of the market-place, and the vogue of the moment pervade the current use of English. This is true of every other language in current use. We know again that among the thousand books put forth each year, but one or two survive and are worth our study. And we are oft-times perplexed to select those two, and avoid loss of time and effort upon the unworthy. But among the classics the winnowing hand of time has made the selection for us. The slang, the jargon, and the vogue have passed. The clamorous utterances of the ephemeral and the unworthy have perished. The fittest, however, survive.

One accent of the Holy Ghost
The heedless world hath never lost.

And these are our classics; these the testings and selections which the ages have pronounced worthy. It is the absorption of these, the mastery of their spirit, and the equipment that they yield, which give to the educated lawyer his special strength; which give the educated man in every field his sense of kinship with the great minds of all ages; which store his mind with the resources of the world; which give the spirit of light and leading which he needs.

The man who knows his classics goes through the work of life saying:

I have heard the lofty paeans
Of the masters of the shell,
Who have heard the starry music,
And recount its numbers well;
Olympian bards who sung
Divine ideas below,
Which always find us young
And always keep us so.

And he has within him the sense of largeness and of power that gives him in some degree, however small, a fellowship with the greatest and the noblest—with

Caesar's hand, and Plato's brain,
The Lord Christ's heart, and Shakespeare's strain.